

HOOPA VALLEY TRIBAL COUNCIL,	:	Order Docketing Appeal and
Appellant	:	Affirming Decision
	:	
v.	:	
	:	Docket No. IBIA 94-66-A
CHIEF, BRANCH OF JUDICIAL SERVICES,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 20, 1994

Appellant Hoopa Valley Tribal Council seeks review of a February 8, 1994, decision issued by the Chief, Branch of Judicial Services, Bureau of Indian Affairs (Chief; BIA) finding that appellant's application for a FY 1994 Special Tribal Courts grant was incomplete because it did not contain Standard Form (SF) 424B, Assurances--Non-Construction Projects.

Appellant argues that the copy of the announcement of the grant program which it received did not contain the second page or signature page of SF 424B, but instead contained two copies of the first page. Appellant supports its argument with two declarations from other tribal leaders stating that the copies of the announcement they received also did not include the second page of SF 424B. Appellant argues that BIA violated its trust responsibility by failing to perform its duty to provide an accurate and complete solicitation. Appellant also contends that BIA is applying an arbitrary standard because it reviewed and rated other applications that contained only the first page of SF 424B. Appellant argues that it "did not submit the first page of Standard Form 424-B for the reason that there is utterly nothing on that page calling for submission" (Response to Order to Show Cause at 4).

The Chief contends that appellant was on notice that SF 424B was required as part of its application, and that the failure to include even the first page of that form rendered the application incomplete. She further argues that her decision to review and rate those applications which included only the first page of SF 424B was a reasonable response to the finding that BIA had erred in photocopying the announcement sent to tribal leaders.

Appellant included a copy of the announcement sent to it by BIA in its response to the Board's order to show cause. The announcement, which is a retyped copy of the Federal Register announcement published in 58 FR 53374 (Oct. 14, 1993), refers to SF 424B in several places. Part III.B, Application Contents and Assembly, states:

Each applicant shall submit an original and three copies of the application as prescribed in the Summary-Addresses. \* \* \* Applications must be assembled in the following order:

1) Standard Form (SF) 424, Application for Federal Assistance; SF 424B, Assurances - NonConstruction Programs \* \* \*.

Part IV. E, Application Requirements, further provides that “[i]n order to be reviewed, each application must meet the following requirements: \* \* \* 4) the following documents are excluded from the 50 page limitation: \* \* \* Standard Forms (SF) 424 and 424B” (Emphasis in original). The first page of SF 424B clearly shows the form number, and indicates that “[i]f you have any questions, please contact the awarding agency.” Part IV.C, Incomplete Applications, provides that “[i]ncomplete applications will not be reviewed or rated. \* \* \* An incomplete application is an application which does not contain the information and documentation listed in Part IV-E, Application Requirements.”

Appellant admits receiving the first page of SF 424B. Appellant offers no explanation for its decision not to include that first page in its application other than there was nothing on the face of the form indicating that it was to be submitted. The Board finds this explanation unpersuasive. Appellant was on notice from the announcement it received that SF 424B was required as part of its application. Its decision not to include any part of that form was made at its own risk.

Furthermore, the Board concludes that the Chief's decision to review and rate those applications which included only the first page of SF 424B was reasonable under the circumstances where BIA had undertaken to provide tribal leaders with copies of the program announcement, and had erred in photocopying the materials. However, that decision does not require BIA to also review and rate those applications which did not include even the first page of SF 424B.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Chief's February 8, 1994, decision is docketed, and that decision is affirmed. 1/

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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1/ Other arguments raised in appellant's reply brief were considered and rejected.